the danger and made no effort to avoid it trusting entirely to the car avoiding him. The appellant was to my mind guilty of a great deal more than an error of judgment, and I think the evidence was amply sufficient to justify the Magistrate finding that the accused shewed such disregard for the safety of others as to amount to a crime.

Mr. Spenser Wilkinson has suggested that the Magistrate laid undue emphasis on the fact that accused had not a licence. Driving without a licence does not necessarily amount to negligent driving, but it may well be an indication of recklessness if a person with no qualifications for doing an act voluntarily undertakes to do it, as if a layman performed a serious surgical operation when there was no necessity for him to attempt it. But in the present case the accused seems to have driven quite often enough to have acquired the requisite knowledge and skill even if he had not passed a police examination for a driver's licence. The Magistrate realised that the accused had become in certain respects proficient, but he found that the accused accepted risk in the expectation that the car would manage to get past without any effort on his part to avoid collision.

One other point was touched on. It was said that at the close of the evidence for the prosecution a case had not been made out. Without assenting to this proposition but assuming it to be true, the accused's own evidence has established the crown case and the principle of *The King* v. *Power* (1919) 1 K.B. 579 applies.

It was urged upon me that the sentence of three months simple imprisonment was in any case excessive. Section 338 under which the accused was convicted authorizes a maximum sentence of two years rigorous imprisonment and a fine of $500.

A superior Court should not lightly interfere with a sentence of a lower Court unless that sentence is manifestly excessive or inadequate, or unless it is apparent that some mitigating or aggravating circumstances proved in evidence have not been fully taken into consideration.

In a recent case I reduced a sentence because the Magistrate in taking a mitigating circumstance into consideration, appeared to do so only partially. He only gave effect to it as being possibly true, whereas he had twice expressed the view that it was not true. It appeared to me on the evidence to be clearly true.

In the present case the learned Magistrate took into consideration in favour of the accused —the fact that he was on the superior road and the possibility as to contribution by the driver of the car. In so doing he gave the accused in the first place the benefit of his mistaken opinion that a motor vehicle on a so called " main road " owes no duty to avoid collision with a vehicle crossing the " main road " from a so called " side or minor road "; and in the second place in imputing the negligence of the car driver to the latter's unfortunate passenger.

There is some authority for saying that if the killed or injured person contributed to his own death or injury by his negligence, it may be taken into consideration in imposing punishment, *R.* v. *Longbottom*, 3 Cox's Criminal Cases, 439, but I am not aware that if the accused's guilt is shared by another not being the injured party it is *per se* an extenuating circumstance.

The contributory negligence can however be considered if it tends to shew that the culpable negligence of the prisoner was criminal in a lesser rather than in a greater degree. As I have said before the contributory negligence may itself be the only proximate or effective cause of the accident and it may possibly loom so large as to cause the negligence of the prisoner to appear little, if any, more than an error of judgment, so too contributory negligence may shew that the prisoner who crossed the line separating purely civil from criminal negligence has crossed if for a short, rather than for a long, way.

It is really a question of fact or degree in each case, and there is no rule of law that what would be an appropriate sentence if the accused alone were negligent is to be halved or quartered if one or three others shared his guilt.

It is impossible to say that the learned magistrate erred in the sentence he imposed, or that he failed to take into consideration any circumstances in mitigation.

I therefore dismiss the appeal.

Appeal dismissed.

Solicitors for appellant—*Donaldson & Burkinshaw.*

[ORIGINAL CIVIL JURISDICTION]

ADRIAN CLARK, J.

February 5, 1937.

RE S. M. ALI KADER & CO.
RE CHOP HOCK JOO SENG
RE CHOP TYE CHIANG HENG
RE CHOP KWONG WOH LOONG.

[SINGAPORE BANKRUPTCIES NOS. 482 OF 1922, 199 OF 1923, 67 OF 1924 AND 290 OF 1924].

Bankruptcy—Receiving Order against firm and no partner adjudicated.

Where a Receiving Order has been made against a firm and assets have been realised by the Official Assignee under his powers as receiver, but no person has been found against whom an Order of Adjudication can be made as partner of the firm the Court has no power to authorise the Official Assignee to distribute the assets amongst the creditors of the firm.

MOTION.

E. B. Williams, Official Assignee, in support of the motion.

ADRIAN CLARK, J.—In all these Bankruptcy proceedings Receiving Orders were made by this Court against trading firms and property

was duly taken over by the Official Assignee, as Receiver only, under section 8 of the Bankruptcy Ordinance.

In none of these cases has it ever been possible to ascertain the identity of any of the partners of the firm. Consequently it has been impossible to make any adjudication of bankruptcy; and the Official Assignee has remained in possession of the assets of each firm for 12 or 14 years without being able to distribute those assets among the creditors of the firm.

In these circumstances the Official Assignee has in each case now made application to the Court for an Order vesting the assets in him as Trustee for the creditors and for directions to him to distribute those assets amounted the creditors as he would do if an adjudication of bankruptcy had been made.

In making these applications the Official Assignee has followed a practice which has become established since 1933 and he has brought to my attention eight such Vesting Orders which have since that date been made by various Judges of this Court, three of the most recent having been made by myself.

In doing so, however, the Official Assignee has very properly expressed his own doubt as to whether the Court has in law any power to make such a Vesting Order.

When I was first asked to make such an order I myself expressed doubt on the matter but, having been assured that such orders had been for some years currently made, and being satisfied that the order was a just and proper one if it *could* be made, I allowed the application without further studying the technical aspect of the matter.

Now that the point has been definitely brought to my notice for further consideration I am satisfied that the order made in 1933, and those following it in subsequent years, were all made in the absence of any argument or opposition, and that the decisions involved in the making of them are not binding on me.

I am also satisfied that this Court has no power, under the Bankruptcy Ordinance or otherwise, to make any such order. When the Official Assignee acts under section 8 of the Ordinance he does not thereupon become a Trustee for the creditors, and clearly his powers as receiver, whether considered in the light of section 8 or of section 71, do not include any powers to distribute the property which he has received. The Receiving Order is merely one "for the protection of the estate" (section 4).

The powers contained in sections 58 and 59 cannot be called in aid; they refer, in any case, to property of "the bankrupt" (not of "the debtor" as in other parts of the Ordinance) and are exerciseable only after adjudication.

The powers of distribution, under section 60, are also only exerciseable after the adjudication (subsection (2)).

The property only vests in the Official Assignee, for purposes of division among the creditors, after a debtor has been adjudged bankrupt [sec. 24 (4)].

In the existing state of the law a firm cannot, as such, be adjudged bankrupt; such an order can only be made against an individual partner or partners. The point at which distribution can be made, therefore, in cases like the present can never be reached.

The powers of the Court under section 89 of the Ordinance, though wide, cannot include the making of an order which would in fact amount not to a decision of a question involved in the bankruptcy proceedings but rather to legislating outside the terms of the Ordinance itself.

Is there any other order that this Court, in these circumstances, can properly and usefully make?

It cannot direct payment into Court under section 132, the property concerned being neither an "unclaimed dividend" nor money remaining in the hands of the Official Assignee "after making a final dividend."

The only order which the Court could make would be to rescind the Receiving Order, under the powers given to it by subsection (1) of section 90 of the Ordinance, but I can see no sufficient reason for doing so. If the property was originally recovered by the Official Assignee from the hands of the Sheriff, having been seized in execution by the latter, the result might be to benefit the judgment creditor (on whose behalf it had been seized by the Sheriff) to the exclusion of other creditors (including the petitioning creditor who had properly brought the matter into the Bankruptcy Court). If the property was never in the hands of the Sheriff it would be difficult to know what order this Court should make as to its disposal once the Receiving Order was rescinded and the Official Assignee's right to retain the property had therefore ceased.

It might be possible to advertise for creditors, asking those still interested to agree to assign to the Receiver their claims against the debtor firm. The Receiver could then obtain the leave of the Court to sue, with substituted service, for the total of the claims assigned to him and, having obtained judgment, the Receiving Order might then be rescinded and the property handed over to the Sheriff in execution of that judgment, its proceeds being divided, *pro rata* by the Official assignee, among the creditors who had Assigned to him. Such a procedure, however, is nowhere laid down, it would be somewhat artificial and I am not prepared to direct that it shall be followed unless an application to that effect is made to the Court and the pros and cons are discussed and considered.

The applications actually before me are for Vesting Orders only. I understand that the Bankruptcy law is shortly to be revised and that the Bill drafted for the purpose will contain provisions for dealing with the difficulties existing in cases like those before me. If so, such provisions might well be made to apply not only to proceedings in which a Petition is presented after the Bill becomes law but to all prior proceedings in which undistributed property remains in the hands of the Official Assignee as Receiver only.

At present I have no jurisdiction to make the Orders moved for and I must therefore refuse the application and dismiss the Motions in which they are made.

Motions dismissed.

[ORIGINAL CIVIL JURISDICTION]
McELWAINE, C.J.
February 26, 1937.

RE ALEXIUS RODRIGUES.

[SINGAPORE WAGE-EARNER'S ADMINISTRATION ..ORDER No. 465 of 1936].

Bankruptcy Ordinance (Cap. 45) s. 105—Wage-Earner's Administration Orders 34.

When a wage-earner's administration order is made against a debtor who has a share or interest in the capital of a registered co-operative society or a deposit with that society the Official Assignee is entitled to recover from the registered society a sum of money equal to the credit balance of such member in the society's hands at the date of the making of the wage-earner's administration order. For the purpose of s. 24 of the Bankruptcy Ordinance the making of a wage-earner's administration order is to be deemed an adjudication in bankruptcy.

MOTION.

E. B. Williams, Official Assignee, in support of the motion.

The facts and arguments appear sufficiently from the judgment.

Cur. Ad. Vult.

McELWAINE, C.J.—A wage-earner's administration order made against Alexius Rodrigues (hereinafter called the debtor) on 16th October 1936 under s. 103 of the Bankruptcy Ordinance.

The debtor has a sum of $174.20 standing to the credit of his account in the Singapore Government Servants' Co-operative Thrift and Loan Society Ltd. and the present application is to determine whether this sum vests in the Official Assignee by virtue of the wage earners' administration order.

S. 23 of the Co-operative Societies Ordinance gives to a registered society a lien upon the share or interest in the capital and on the deposits of a member or past member of the society in respect of any debt due from such member or past member and may set off any sum credited or payable to the member or past member in or towards payment of any such debt.

S. 24 reads as follows:—

> "Subject to the provisions of s. 23, the share or interest of a member in the capital of a registered society shall not be liable to attachment or sale under any judgment or order of a Court of Justice in respect of any debt or liability incurred by such member, and the Official Assignee under the law relating to Bankruptcy for the time being in force shall not be entitled to or have any claim on such share or interest:
>
> Provided that the Official Assignee shall be entitled to recover from the registered society a sum of money equal to the amount of the credit balance of such member in the society's hands at the date of the adjudication of such member as a bankrupt."

The short point of the application is whether a member of a registered co-operative society against whom a wage-earner's administration order has been made can be said to have been adjudicated as a bankrupt with the consequence that the Official Assignee may recover from the society a sum of money equal to the amount of the credit balance in the society's hands of the person against whom a wage-earner's administration order has been made.

S. 105 of the Bankruptcy Ordinance distinguishes between a bankruptcy petition and a wage-earner's administration order petition because there is a difference in the consequences.

Sub-s. 7 of this section enacts:—

> "Subject to the modifications set out in sub-s. 8 a wage earner's administration order.....shall have effect in the same manner and to the same extent as if in regard to the debtor.....a receiving order and an order of adjudication had been made against him.....and all the provisions of this Ordinance (other than s. 114 hereof) shall apply accordingly."

The modifications shortly are that there is to be no public examination, the registrar may exercise certain powers exercised by a Judge in bankruptcy, and the debtor shall, in proceedings under the Bankruptcy Ordinance be referred to as "a debtor and not as a bankrupt" and for the purposes of this section the word "bankrupt" wherever it occurs in the Ordinance shall be read as "debtor."

This section 105 is part of the Bankruptcy Ordinance. An order made under it is an order of the Court in Bankruptcy. With certain minor exceptions a person against whom a wage-earner's administration order has been made is in the same position as a bankrupt. His property vests in the Official Assignee, the Official Assignee distributes it among the creditors, the debtor is liable to be punished if he commits an offence for which a bankrupt can be punished, his administration order may be discharged just as a bankrupt's adjudication order may be discharged.